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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/711,447	11/13/2000	Toan Trinh	5388RDD	8236

27752 7590 03/13/2006

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EXAMINER

YU, GINA C

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/711,447	Applicant(s) TRINH ET AL.	
	Examiner Gina C. Yu	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/24/2002</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of amendment filed on August 22, 2002. The present case has been granted a petition to revive abandoned application on October 2, 2002. Claim rejection made under 35 U.S.C. § 112, second paragraph, as indicated in the Office action dated August 15, 2001, is withdrawn in view of the claim amendment made by applicants. Claim rejections made under 35 U.S.C. §§ 102 and 103 are withdrawn in view of the claim amendment. Obviousness double patenting rejection made in the same Office action is withdrawn in view of terminal disclaimer filed on August 22, 2002. New rejections are made to address the newly added claim limitation. New obvious double patenting rejections are made in view of further search and consideration.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on October 24, 2002 was filed after the mailing date of the Office action mailed on August 15, 2001. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Terminal Disclaimer

The terminal disclaimer filed on August 22, 2002 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Pat. No. 5939060 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3, 5-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 28, 29, 30, 31, and 32 recite "essentially free of any material that would soil or stain fabric". It is not clear what amount of the material applicants mean by the term "essentially free". Furthermore, the claims are vague and indefinite because it is not clear what specific materials are excluded from the claim, since there is no disclosure in the specification for a skilled artisan to ascertain what applicants mean by "any material that would soil or stain fabric".

The term "less than about 5" in the same claims also renders the claim vague and confusing, as the metes and bounds of the scope of the claim is not clear. For instance, 5.1 is about 5 but is not less than 5. It not clear what numeric range would meet this limitation.

The remaining claims are rejected as depending on indefinite claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-7, 21, 22, and 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hutchings et al. in view of Toshiyuki et al. (JP05-269185 A, translation).

Hutchings et al. teach a deodorizing and cleaning compositions comprising less than 0.25 % of perfume in aqueous carrier containing 1-15% of alcohol. See col. 1, line 64 – col. 3, line 47. Claims 1-3 are thus met. The presence of above about 0.1-1% by weight of zinc chloride is also disclosed, meeting claims 18-20, in col. 4, lines 8 – 36. The reference further teaches that about 1-5% of surfactants as stabilizing aids may be used in the composition, meeting claims 21. See col. 5, lines 13 – 36; col. 1, lines 58-64. The reference also teaches that the composition may be used to deodorize fabrics using spraying, which meets claim 34. See col. 1, line 64 – col. 2, line 12; Examples. Hutchings et al. is discussed above.

Hutchings et al. fail to teach the perfume ingredients having Clog P of 3 or smaller.

Toshiyuki et al. teach liquid deodorant composition comprising the perfume ingredients having Clog P value of 3 or smaller. The reference teaches that the composition uses refined plant oils and provides an excellent fast-acting deodorizing effect. See p. 2, abstract. Table I illustrates Application Example 4 and 5, each comprising 0.2 % of linalool (more than 25 % of the total perfume used in the formulation). Table III teaches that Examples 4 and 5 have low odor intensity with high degree of pleasantness. The Application Examples also contain antibacterial components in the amount of 0.005 – 0.083 % by weight of the total composition. See

p. 11, [0017]. The reference teaches quaternary ammonium compounds. See instant claim 27.

While the prior art uses a lower amount of antibacterial components than claimed in the instant invention, examiner respectfully points out that Generally, differences in concentration or temperature will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." See In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In this case, Toshiyuki et al. teach the same type of preservatives that are used in the instant claims. It is viewed that one of ordinary skill in the art would have found the workable amount of preservatives that is useful in the deodorant composition by routine experimentation.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the deodorant composition of Hutchings by substituting the perfume with the plant oil mixture of Toshiyuki. The skilled artisan would have been motivated to combine the teachings of the reference because (i) both references are directed to deodorant compositions; and (ii) Toshiyuki teaches that its perfume mixture is fast acting and produces pleasantness and low odor intensity.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hutchings et al. and Toshiyuki et al. as applied to claims 1-3, 5-7, 21, 22, 26-29 as above, and further in view of Suzuki et al. (US 4299549).

Toshiyuki et al. teaches dispensing the composition from a spray container. See p.15, Application Examples 1-6; p. 7, [0010]; instant claim 34.

The reference fails to teach using a clear polyethylene terephthalate bottle.

Suzuki et al. teach that polyethylen terephthalate is well known to make a transparent plastic bottles. See abstract.

It would have been obvious to one of ordinary skill in the art at the time the present invention was made to have modified the dispensing method of the combined references by using a clear polyethylene terephthalate spray bottle as motivated by Suzuki et al. because the transparent bottle would allow the user to see the remaining content of the product.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 34 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 5663134.

Claim 1 of the '134 patent is directed to an article of manufacture comprising a transparent polyethyleneterephthalate spray dispenser containing an aqueous composition comprising 0.01-0.5 % of perfume, wherein at least 25 % of the perfume ingredients have a Clog P of 3 or smaller and a trigger spray dispense wherein the container is transparent polyethyleneterephthalate, wherein the composition essentially free of any material that would soil or stain fabric. The present claim, claim 34, is directed to a method of using a device which reads on the previously patented invention. Although the conflicting claims are not identical, they are not patentably distinct from each other.

Claims 1-7, 28, 29 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6146621.

Claim 1 of the '621 patent is directed to an aqueous composition comprising 0.015 – 1 % by weight, of the composition, of perfume, aqueous carrier, wherein the composition optionally contains 0.1-5 % of unprotected cyclodextrin and surfactants. See instant claims 1, 28. Claim 4 recites that least 25 % of the perfume comprises perfume ingredients having a Clog P of 3 or smaller. The amount of the perfume and the specific perfume ingredients of instant claims are also recited in Claims 2,3, and 5 of

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the '621 patent. See instant claims 2-7. Although the conflicting claims are not identical, they are not patentably distinct from each other

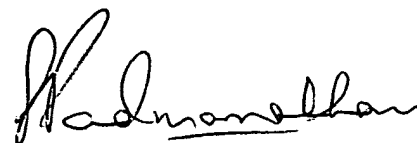
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 9:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gina Yu
Patent Examiner



**SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER**